(27,798)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 441.

PINE HILL COAL COMPANY, INC., APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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I. *Petition and Exhibits.*

Filed Sept. 24, 1919.

IN THE

Court of Claims of the United States.

Pine Hill Coal Company, Inc.,

vs.

The United States.

No. 34,202.

PETITION.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE JUDGES OF THE COURT OF CLAIMS OF THE UNITED STATES.

The Claimant, Pine Hill Coal Company, Inc., respectfully represents:—

1. The Claimant is a corporation of the State of Pennsylvania and has been since the year 1898 lawfully engaged in the business of mining, producing and selling anthracite coal, having its office and principal place of business at Scranton, Pennsylvania, and operating mines and collieries in Cass Township, Schuylkill County, Pennsylvania. At the said mines and collieries this Claimant mines and produces, and since the year 1898 has mined and produced anthracite coal of white ash grade, and in the following sizes, to wit: Egg, Stove, Chestnut, Pea, Buckwheat, Rice, Barley, and Culm. The principal business of this Claimant consists of mining, producing and selling the larger sizes of coal, *i. e.*, Egg, Stove, Chestnut, and Pea, which sizes are commonly known and hereinafter referred to as "Domestic Sizes." As an incident to the mining of these

sizes, and as a byproduct thereof, there are necessarily produced certain quantities of smaller sizes, *i. e.*, Buckwheat, Rice, Barley, and Culm, which sizes are commonly known and hereinafter referred to as "Steam Sizes," and are sold and used for manufacturing purposes in competition with bituminous coal.

The said mines and collieries have always been economically and efficiently operated, in accordance with the best practice prevailing in the anthracite region, and the coal produced therefrom has been mined at a reasonably low cost in comparison with similar anthracite mines and collieries in the same region.

2. The President of the United States, under and by virtue of the powers granted to him by the Act of Congress approved August 10th, 1917 (40 Statutes at Large 276), on August 23d, 1917, by executive order (Fuel Administration Publication No. 3), fixed the maximum price at which the Domestic Sizes of anthracite coal might be sold f. o. b. mines after September 1st, 1917. A true and correct copy of the said order is hereto attached and made a part hereof, marked "Exhibit A."

3. The President of the United States, under and by virtue of the powers granted to him by the said Act of August 10th, 1917, on August 23d, 1917, by Executive Order No. 2690 (Fuel Administration Publication No. 1), appointed Harry A. Garfield United States Fuel Administrator, and by the said order delegated to the said Fuel Administrator the powers and authority given to the President in the said Act in so far as the same applied to fuel. A true and correct copy of said order is hereto attached and made a part hereof, marked "Exhibit B."

4. By direction of the President of the United States, the said United States Fuel Administrator on October 1st, 1917, by order (Fuel Administration Publication No. 4), amended and reduced by 60 cents per ton the maximum

prices as fixed by the President August 23d, 1917, for Pennsylvania anthracite pea coal. A true and correct copy of the said order is hereto attached and made a part hereof, marked "Exhibit C."

5. The President of the United States on November 28th, 1917, by Executive Order, effective December 1st, 1917, amended and increased the said prices on Domestic Sizes as originally fixed by the President and as revised by the United States Fuel Administrator, by adding 35 cents per ton thereto. A true and correct copy of the said order is hereto attached and made a part hereof, marked "Exhibit D."

6. By order of the said United States Fuel Administrator, the said prices on Domestic Sizes were reduced by 30 cents per ton on all coal sold during the months of April, May, June, July, and August, 1918.

7. The said United States Fuel Administrator, on November 7th, 1918, by order (Fuel Administration Circular 3505), again amended and increased the said prices on Domestic Sizes as originally fixed by the President and as revised as aforesaid by adding thereto an additional sum of $1.05 per ton on all of the said sizes of coal mined and produced on and after November 1st, 1918. A true and correct copy of the said order is hereto attached and made a part hereof, marked "Exhibit E."

8. The said United States Fuel Administrator, with the approval of the President, on January 31st, 1919, by order (Fuel Administration Circular 3886), suspended all orders previously issued or promulgated by or under authority of the President or of the United States Fuel Administrator, fixing the prices of coal. A true and correct copy of the said order is hereto attached and made a part hereof, marked "Exhibit F."

9. The said maximum prices, as originally fixed and as amended by the President and by the United States Fuel Administrator, as applied to the coal mined and produced by this Claimant, were unjust, unreasonable, and did not afford just compensation therefor. The said prices were not satisfactory to this Claimant, and protests against the same were made to the United States Fuel Administrator from time to time by and on behalf of this Claimant.

10. During the month of September, 1917, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 17,323.95 tons (2240 pounds each), of white ash anthracite coal for the total sum of $82,618.57 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

SEPTEMBER, 1917.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	2,953.75	2,953.75	$5.20	$15,359.50	.....	.....	.....	$15,359.50
Stove	3,467.2	3,467.2	5.45	18,896.27	.....	.....	.....	18,896.27
Nut	4,897.	4,897.	5.55	27,178.39	.....	.....	.....	27,178.39
Pea	1,617.8	1,617.8	4.75	7,684.57	.....	.....	.....	7,684.57
Buck	3,060.55	.....	.....	.....	3,060.55	$3.5229	$10,782.18	10,782.18
Rice	856.7	.....	.....	.....	856.7	2.50	2,141.76	2,141.76
Barley	195.1	.....	.....	.....	195.1	1.75	341.43	341.43
Culm	275.85	.....	.....	.....	275.85	.8499	234.47	234.47
	17,323.95	12,935.75	.....	$69,118.73	4,388.2	.....	$13,499.84	$82,618.57

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

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In addition to the amount received from the said sales, this Claimant received $541.80 from miscellaneous sources, making the total receipts from its mining operations for the said month $83,160.37.

The cost of production of the said coal during the said month, including the expense of operation, maintenance, depreciation, and depletion was $85,544.27.

A reasonable price for the 12,935.75 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $84,495.59, which sum would have been at least $15,376.86 in excess of the amount actually received for the same from sales at the Government prices.

11. During the month of October, 1917, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 21,568.3 tons (2240 pounds each) of white ash anthracite coal for the total sum of $103,361.59 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

OCTOBER, 1917.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
.....	3,442.35	3,442.35	$5.20	$17,900.22	.....	.....	.....	$17,900.22
ve.....	4,145.75	4,145.75	5.45	22,594 38	.....	.....	.....	22,594.38
.....	6,155.25	6,155.25	5.55	34,161.66	.....	.....	.....	34,161.66
.....	2,137.55	1,901.75	4.15	7,892.29	235.8	$4.85	$1,143.63	9,035.92
k.....	3,981.4	.....	.....	.....	3,981.4	4.0451	16,105.45	16,105.45
e.....	875.5	.....	.....	.....	875.5	2.8147	2,464.30	2,464.30
ley.....	394.55	.....	.....	.....	394.55	1.8009	710.48	710.48
m.....	435.95	.....	.....	.....	435.95	.8927	389.18	389.18
	21,568.3	15,645.1	.....	$82,548.55	5,923.2	.....	$20,813.04	$103,361.59

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The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the said Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $765.02 from miscellaneous sources, making the total receipts from its mining operations for the said month $104,126.61.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $100,931.95.

A reasonable price for the 15,645.1 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $95,530.12, which sum would have been at least $12,981.57 in excess of the amount actually received for the same from sales at the Government prices.

12. During the month of November, 1917, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 17,729.35 tons (2240 pounds each) of white ash anthracite coal for the total sum of $86,844.10, f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

NOVEMBER, 1917.

ZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts fom all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
.....	3,254.85	3,254.85	$5.20	$16,925.22	.....	.....	.....	$16,925.22
.....	3,410.15	3,410.15	5.45	18,585.35	.....	.....	.....	18,585.35
.....	5,194.85	5,194.85	5.55	28,831.47	.....	.....	.....	28,831.47
.....	1,688.05	1,074.5	4.15	4,459.20	613.55	$4.85	$2,975.72	7,434.92
.....	3,074.1	.....	.....	.....	3,074.1	4.22	12,972.66	12,972.66
.....	352.7	.....	.....	.....	352.7	2.9211	1,030.27	1,030.27
y.....	323.65	.....	.....	.....	323.65	2.0846	674.68	674.68
.....	431.	.....	.....	.....	431.	.9037	389.53	389.53
	17,729.35	12,934.35	.....	$68,801.24	4,795.	.....	$18,042.86	$86,844.10

The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the said Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1005.80 from miscellaneous sources, making the total receipts from its mining operations for the said month $87,849.90.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation and depletion was $85,429.06.

A reasonable price for the 12,934.35 tons of coal mined, produced and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $79,677.41, which sum would have been at least $10,876.17 in excess of the amount actu-

ally received for the same from sales at the Government prices.

13. During the month of December, 1917, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 18,746.3 tons (2240 pounds each), of white ash anthracite coal for the total sum of $99,929.21, f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

DECEMBER, 1917.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			To rec fr all
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	3,402.95	3,402.95	$5.55	$18,886.41	.....	.....	.....	$18
Stove	3,646.75	3,646.75	5.80	21,151.15	.....	.....	.....	21
Nut	5,851.65	5,851.65	5.90	34,524.81	.....	.....	.....	34
Pea	1,735.8	1,059.3	4.50	4,766.87	676.5	$5.20	$3,517.80	8
Buck	3,303.85	.....	.....	.....	3,303.85	4.4906	14,836.41	14
Rice	244.05	.....	.....	.....	244.05	3.3096	807.78	
Barley	145.1	.....	.....	.....	145.1	2.60	377.26	
Culm	416.15	.....	.....	.....	416.15	2.5488	1,060.72	1
	18,746.3	13,960.65	.....	$79,329.24	4,785.65	.....	$20,599.97	$9

The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the said Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1969.40 from miscellaneous sources, making the total receipts from its mining operations for the said month $101,898.61.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $93,872.36.

A reasonable price for the 13,960.65 tons of coal mined, produced and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $85,362.72, which sum would have been at least $6033.48 in excess of the amount actually received for the same from sales at the Government prices.

14. During the month of January, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 20,579.3 tons (2240 pounds each), of white ash anthracite coal for the total sum of $109,170.57, f. o. b. mines;; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

JANUARY, 1918.

IZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
.....	3,986.75	3,986.75	$5.55	$22,126.49	.....	.....	.....	$22,126.49
e.....	3,965.15	3,965.15	5.80	22,997.87	.....	.....	.....	22,997.87
.....	6,287.4	6,287.4	5.90	37,095.74	.....	.....	.....	37,095.74
.....	1,822.9	1,276.4	4.50	5,743.83	546.5	$5.20	$2,841.80	8,585.63
.....	3,330.25	.....	.....	.....	3,330.25	4.4689	14,882.77	14,882.77
.....	437.1	.....	.....	.....	437.1	3.25	1,420.58	1,420.58
ey.....	51.2	.....	.....	.....	51.2	2.35	120.32	120.32
n.....	698.55	.....	.....	.....	698.55	2.7788	1,941.17	1,941.17
	20,579.3	15,515.7	.....	$87,963.93	5,063.6	.....	$21,206.64	$109,170.57

The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said

coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1812.42 from miscellaneous sources, making the total receipts from its mining operations for the said month $110,982.99.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $104,799.83.

A reasonable price for the 15,515.7 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $97,215.24, which sum would have been at least $9251.31 in excess of the amount actually received for the same from sales at the Government prices.

15. During the month of February, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 19,219.3 tons (2240 pounds each) of white ash anthracite coal for the total sum of $101,050.94 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

FEBRUARY, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	3,532.55	3,532.55	$5.55	$19.605.68	.....	.....	.....	$19,6
Stove	3,765.2	3,765.2	5.80	21,838.16	.....	.....	.....	21,8
Nut	5,837.45	5,837.45	5.90	34,441.00	.....	.....	.....	34,4
Pea	1,702.25	1,223.	4.50	5,503.51	479.25	$5.20	$2,492.10	7,9
Buck	2,738.4	.....	.....	.....	2,738.4	4.4515	12,190.03	12,1
Rice	761.3	.....	.....	.....	761.3	3.3270	2,532.89	2,5
Barley	49.9	.....	.....	.....	49.9	2.3500	117.27	1
Culm	832.25	.....	.....	.....	832.25	2.8000	2,330.30	2,3
	19,219.3	14,358.2	.....	$81,388.35	4,861.1	.....	$19,662.59	$101,0

The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1160.76 from miscellaneous sources, making the total receipts from its mining operations for the said month $102,211.70.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $94,613.62.

A reasonable price for the 14,358.2 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $88,204.75, which sum would have been at least $6816.40 in excess of the amount actually received for the same from sales at the Government prices.

16. During the month of March, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 22,230.45 tons (2240 pounds each) of white ash anthracite coal for the total sum of $115,608.99 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

MARCH, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	4,044.95	4,044.95	$5.55	$22,449.48	.....	.....	.....	$22,449.48
Stove	4,236.2	4.236.2	5.80	24,569.97	.....	.....	.....	24,569.97
Nut	6,279.3	6,279.3	5.90	37,047.93	.....	.....	.....	37,047.93
Pea	2,064.85	1,593.85	4.50	7,172.34	471.	$5.20	$2,449.20	9,621.54
Buck	3,379.8	.....	.....	.....	3,379.8	4.4428	15,015.97	15,015.97
Rice	1,107.3	.....	.....	.....	1,107.3	3.4744	3,847.20	3,847.20
Barley	978.45	.....	.....	.....	978.45	2.80	2,739.66	2,739.66
Culm	139.6	.....	.....	.....	139.6	2.2725	317.24	317.24
	22,230.45	16,154.3	.....	$91,239.72	6,076.15	.....	$24,369.27	$115,608.99

The Domestic Sizes of the said coal were all sold either at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month, or under contracts approved by the Fuel Administrator at prices higher than those so fixed; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open maket during the said month.

In addition to the amount received from the said sales, this Claimant received $648.33 from miscellaneous sources, making the total receipts from its mining operations for the said month $116,257.32.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $105,820.05.

A reasonable price for the 16,154.3 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $97,475.29, which sum would

have been at least $6235.57 in excess of the amount actually received for the same from sales at the Government prices.

17. During the month of April, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 20,566.75 tons (2240 pounds each), of white ash anthracite coal for the total sum of $101,888.33 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

APRIL, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
.....	3,487.	3,487.	$5.25	$18,306.78	.....	.....	.....	$18,306.78
ve.....	3,958.45	3,958.45	5.50	21,771.53	.....	.....	.....	21,771.53
t.....	5,694.15	5,694.15	5.60	31,887.24	.....	.....	.....	31,887.24
.....	1,992.35	1,992.35	4.20	8,367.87	.....	.....	.....	8,367.87
k.....	3,059.45	.....	.....	.....	3,059.45	$4.40	$13,461.58	13,461.58
e.....	1,351.1	.....	.....	.....	1,351.1	3.90	5,269.30	5,269.30
ley.....	1,024.25	.....	.....	.....	1,024.25	2.7571	2,824.03	2,824.03
	20,566.75	15,131.95	.....	$80,333.42	5,434.8	.....	$21,554.91	$101,888.33

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $799.35 from miscellaneous sources, making the total receipts from its mining operations for the said month $102,687.68.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $99,852.40.

A reasonable price for the 15,131.95 tons of coal mined, produced, and sold at the Government prices during the said

month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $92,923.20, which sum would have been at least $12,589.78 in excess of the amount actually received for the same from sales at the Government prices.

18. During the month of May, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 21,834.35 tons (2240 pounds each), of white ash anthracite coal for the total sum of $107,859.68 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

MAY, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			To rec fr all s
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	3,834.15	3,834.15	$5.25	$20,129.32	.....	.....	.....	$20,
Stove	4,270.1	4,270.1	5.50	23,485.59	.....	.....	.....	23,
Nut	5,722.	5,722.	5.60	32,043.20	.....	.....	.....	32,
Pea	2,179.95	2,179.95	4.20	9,155.79	.....	.....	.....	9,
Buck	3,230.3	.....	.....	.....	3,230.3	$4.40	$14,213.32	14,
Rice	1,468.85	.....	.....	.....	1,468.85	3.9095	5,742.56	5,
Barley	1,129.	.....	.....	.....	1,129.	2.7368	3,089.90	3,
	21,834.35	16,006.2	.....	$84,813.90	5,828.15	.....	$23,045.78	$107,

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $517.69 from miscellaneous sources, making the total receipts from its mining operations for the said month $108,377.37.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $102,790.60.

A reasonable price for the $16,006.2 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $95,602.89, which sum would have been at least $10,788.99 in excess of the amount actually received for the same from sales at the Government prices.

19. During the month of June, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 21,435.75 tons (2240 pounds each), of white ash anthracite coal for the total sum of $105,-281.98 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

JUNE, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
gg.....	3,815.5	3,815.5	$5.25	$20,031.39	.....	.....	.....	$20,031.39
tove.....	3,919.05	3,919.05	5.50	21,554.80	.....	.....	.....	21,554.80
ut.....	5,684.15	5.684.15	5.60	31,831.24	.....	.....	.....	31,831.24
ea.....	2,285.55	2,285.55	4.20	9,599.31	.....	.....	.....	9,599.31
uck.....	2,946.3	.....	.....	.....	2,946.3	$4.40	$12,963.72	12,963.72
ice.....	1,512.15	.....	.....	.....	1,512.15	3.9841	6,024.57	6,024.57
arley.....	47.1	.....	.....	.....	47.1	3.00	141.30	141.30
arley and Smaller..	1,225.95	.....	.....	.....	1,225.95	2.5577	3,135.65	3,135.65
	21,435.75	15,704.25	.....	$83,016.74	5,731.5	.....	$22,265.24	$105,281.98

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing

market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $3054.20 from miscellaneous sources, making the total receipts from its mining operations for the said month $108,336.18.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $104,673.75.

A reasonable price for the 15,704.25 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $95,431.12, which sum would have been at least $12,414.38 in excess of the amount actually received for the same from sales at the Government prices.

20. During the month of July, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 20,537.15 tons (2240 pounds each) of white ash anthracite coal for the total sum of $100,652.13 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:—

JULY, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	3,607.45	3,607.45	$5.25	$18,939.17	.....	.....	.....	$18,939.17
Stove	3,719.6	3,719.6	5.50	20,457.85	.....	.....	.....	20,457.85
Nut	5,397.35	5,397.35	5.60	30,225.16	.....	.....	.....	30,225.16
Pea	2,010.2	2,010.2	4.20	8,442.84	.....	.....	.....	8,442.84
Buck	2,869.05	.....	.....	.....	2,869.05	$4.40	$12,623.82	12,623.82
Rice	1,892.7	.....	.....	.....	1,892.7	4.0685	7,700.49	7,700.49
Barley and smaller	1,040.8	.....	.....	.....	1,040.8	2.174	2,262.80	2,262.80
	20,537.15	14,734.6	.....	$78,065.02	5,802.55	.....	$22,587.11	$100,652.13

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United

States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1875.57 from miscellaneous sources, making the total receipts from its mining operations for the said month $102,527.70.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $100,967.43.

A reasonable price for the 14,734.6 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $91,907.61, which sum would have been at least $13,842.59 in excess of the amount actually received for the same from sales at the Government prices.

21. During the month of August, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 20,753.75 tons (2240 pounds each) of white ash anthracite coal for the total sum of $103,278.47 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

AUGUST, 1918.

E.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
.....	3,805.25	3,805.25	$5.25	$19,977.63	.....	.....	.....	$19,977.63
.....	3,860.5	3,860.5	5.50	21,232.81	.....	.....	.....	21,232.81
.....	5,798.2	5,798.2	5.60	32,469.92	.....	.....	.....	32,469.92
.....	1,905.55	1,905.55	4.20	8,003.31	.....	.....	.....	8,003.31
.....	2,948.8	.....	.....	.....	2,948.8	$4.40	$12,974.72	12,974.72
.....	1,794.05	.....	.....	.....	1,794.05	3.9212	7,034.94	7,034.94
and er...	641.4	.....	.....	.....	641.4	2.4714	1,585.14	1,585.14
	20,753.75	15,369.5	.....	$81,683.67	5,384.25	.....	$21,594.80	$103,278.47

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1292.60 from miscellaneous sources, making the total receipts from its mining operations for the said month $104,571.07.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $108,395.28.

A reasonable price for the 15,369.5 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $101,073.19, which sum would have been at least $19,389.52 in excess of the amount actually received for the same from sales at the Government prices.

22. During the month of September, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 19,301.65 tons (2240 pounds each), of white ash anthracite coal for the total sum of $99,025.59 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

SEPTEMBER, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	3,271.55	3,271.55	$5.55	$18,157.15	.....	.....	.....	$18,157.15
Stove	3,476.35	3,476.35	5.80	20,162.83	.....	.....	.....	20,162.83
Nut	5,376.2	5,376.2	5.90	31,719.63	.....	.....	.....	31,719.63
Pea	1,856.15	1,856.15	4.50	8,352.69	.....	.....	.....	8,352.69
Buck	2,613.55	.....	.....	.....	2,613.55	$4.4052	$11,513.23	11,513.23
Rice	1,726.5	.....	.....	.....	1,726.5	3.9632	6,842.59	6,842.59
Barley	981.35	.....	.....	.....	981.35	2.3207	2,277.47	2,277.47
	19,301.65	13,980.25	.....	$78,392.30	5,321.4	.....	$20,633.29	$99,025.59

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1040.73 from miscellaneous sources, making the total receipts from its mining operations for the said month $100,066.32.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $101,523.66.

A reasonable price for the 13,980.25 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $94,325.88, which sum would have been at least $15,933.58 in excess of the amount actually received for the same from sales at the Government prices.

23. During the month of October, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 5526.3 tons (2240 pounds each), of white ash anthracite coal for the total sum of $29,104.02 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

OCTOBER, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
g.....	1,133.05	1,133.05	$5.55	$6,288.47	.....	.....	.....	$6,288.47
ove.....	1,134.4	1,134.4	5.80	6,579.52	.....	.....	.....	6,579.52
ut.....	1,745.3	1,745.3	5.90	10,297.30	.....	.....	.....	10,297.30
a.....	560.05	560.05	4.50	2,520.25	.....	.....	.....	2,520.25
ack.....	450.5	.....	.....	.....	450.5	$4.41	$1,986.80	1,986.80
ce.....	180.6	.....	.....	.....	180.6	4.00	722.40	722.40
ice and Barley...	322.4	.....	.....	.....	322.4	2.20	709.28	709.28
	5,526.3	4,572.8	.....	$25,685.54	953.5	.....	$3,418.48	$29,104.02

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $374.41 from miscellaneous sources, making the total receipts from its mining operations for the said month $29,478.43.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $56,777.54.

A reasonable price for the 4572.8 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $57,129.38, which sum would have been at least $31,443.84 in excess of the amount actually received for the same from sales at the Government prices.

24. During the month of November, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 13,892.9 tons (2240 pounds each), of white ash anthracite coal for the total sum of $85,837.03 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

NOVEMBER, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg	2,907.9	2,907.9	$6.60	$19,192.14	.....	.....	.....	$19,192.14
Stove	2,912.1	2,912.1	6.85	19,947.93	.....	.....	.....	19,947.93
Nut	4,276.9	4,276.9	6.95	29,724.52	.....	.....	.....	29,724.52
Pea	1,529.15	1,529.15	5.55	8,486.81	.....	.....	.....	8,486.81
Buck	1,586.	.....	.....	.....	1,586.	$4.406	$6,987.76	6,987.76
Barley and smaller	680.85	.....	.....	.....	680.85	2.20	1,497.87	1,497.87
	13,892.9	11,626.05	.....	$77,351.40	2,266.85	.....	$8,485.63	$85,837.03

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1036.43 from miscellaneous sources, making the total receipts from its mining operations for the said month $86,873.46.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $101,022.20.

A reasonable price for the 11,626.05 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum prices which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $101,919.82, which sum would have been at least $24,568.42 in excess of the amount actually received for the same from sales at the Government prices.

25. During the month of December, 1918, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 17,900.4 tons (2240 pounds each), of white ash anthracite coal for the total sum of $109,360.00 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

DECEMBER, 1918.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
gg.....	3,322.75	3.322.75	$6.60	$21,930.15	.....	.....	.....	$21,930.15
ove.....	3,642.55	3,642.55	6.85	24,951.56	.....	.....	.....	24,951.56
ut.....	5,367.	5,367.	6.95	37,300.72	.....	.....	.....	37,300.72
ea.....	2,046.95	2,046.95	5.55	11,360.61	.....	.....	.....	11,360.61
uck.....	2,585.4	.....	.....	.....	2,585.4	$4.4017	$11,380.40	11,380.40
ice.....	426.95	.....	.....	.....	426.95	3.1088	1,327.35	1,327.35
arley and smaller...	508.8	.....	.....	.....	508.8	2.18	1,109.21	1,109.21
	17,900.4	14,379.25	.....	$95,543.04	3,521.15	.....	$13,816.96	$109,360.00

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1584.36 from miscellaneous sources, making the total receipts from its mining operations for the said month $110,944.36.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $118,713.95.

A reasonable price for the 14,379.25 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $116,737.93, which sum would have been at least $21,194.89 in excess of the amount actually received for the same from sales at the Government prices.

26. During the month of January, 1919, this Claimant mined, produced, and sold to the public at the following prices per ton, a total of 18,765.65 tons (2240 pounds each) of white ash anthracite coal for the total sum of $115,896.31 f. o. b. mines; the said tonnage mined and receipts from sales being distributed through the various sizes as follows:

JANUARY, 1919.

SIZE.	Total tons.	SOLD AT GOVERNMENT PRICES.			SOLD AT OTHER THAN GOVERNMENT PRICES.			Total receipts from all sales.
		Tons.	Price.	Amount.	Tons.	Price.	Amount.	
Egg.....	3,816.5	3,816.5	$6.60	$25,188.90	.....	.....	.....	$25,188.90
Stove.....	4,303.1	4,303.1	6.85	29,476.34	.....	.....	.....	29,476.34
Nut.....	6,300.7	6,300.7	6.95	43,785.01	.....	.....	.....	43,785.01
Pea.....	1,971.2	1,971.2	5.55	10,940.20	.....	.....	.....	10,940.20
Buck.....	1,767.05	.....	.....	.....	1,767.05	$2.9445	$5,203.24	5,203.24
Rice.....	419.65	.....	.....	.....	419.65	2.30	965.21	965.21
Barley and smaller...	187.45	.....	.....	.....	187.45	1.80	337.41	337.41
	18,765.65	16,391.5	.....	$109,390.45	2,374.15	.....	$6,505.86	$115,896.31

The Domestic Sizes of the said coal were sold at the maximum prices fixed by the President and the United States Fuel Administrator applicable to sales of the coal mined by this Claimant during the said month; and the Steam Sizes of the said coal were sold at the prevailing market prices, the same being the highest prices obtainable therefor in the open market during the said month.

In addition to the amount received from the said sales, this Claimant received $1214.80 from miscellaneous sources, making the total receipts from its mining operations for the said month $117,111.11.

The cost of production of the said coal during the said month, including the expenses of operation, maintenance, depreciation, and depletion was $112,561.48.

A reasonable price for the 16,391.5 tons of coal mined, produced, and sold at the Government prices during the said month, and the minimum price which this Claimant could have obtained for the same if the prices had not been fixed would have been not less than $118,915.06, which sum would have been at least $9524.61 in excess of the amount actually received for the same from sales at the Government prices.

27. The following table is a recapitulation and consolidation of the figures more fully set forth in paragraphs 10-26 inc. hereof, and shows by months for the period from September 1st, 1917, to January 31st, 1919, (*a*) the gross output of tons of coal from the Claimant's mines, (*b*) the gross receipts from mining operations, (*c*) the cost of production, (*d*) the profit or loss realized by the Claimant, (*e*) the minimum profit of 75 cents per ton which would have been realized by this Claimant if no prices had been fixed, or if the Claimant had been permitted to sell its coal at a fair price, and (*f*) the minimum loss incurred by the Claimant on account of the prices having been so fixed.

MONTH.	(a) Tons mined and sold.			(b) Receipts from mining operations.				(c) Cost of production	(d) Profit or loss.	(e) Minimum profit if fair prices had been fixed.	(f) Loss on account of price fixing.
	At Government prices.	At other than Government prices.	Total tonnage.	Sales at Government prices.	Sales at other than Government prices.	Miscellaneous receipts.	Total receipts.				
1917.											
September	12,935.75	4,388.2	17,323.95	$69,118.73	$13,499.84	$541.80	$83,160.37	$85,544.27	L. $2,383.90	$12,992.96	$15,376.86
October	15,645.1	5,923.2	21,568.3	82,548.55	20,813.04	765.02	104,126.61	100,931.95	P. 3,194.66	16,176.23	12,981.57
November	12,934.35	4,795.0	17,729.35	68,801.24	18,042.86	1,005.80	87,849.90	85,429.06	P. 2,420.84	13,297.01	10,876.17
December	13,960.65	4,785.65	18,746.3	79,329.24	20,599.97	1,969.40	101,898.61	93,872.36	P. 8,026.25	14,059.73	6,033.48
1918.											
January	15,515.7	5,063.6	20,579.3	87,963.93	21,206.64	1,812.42	110,982.99	104,799.83	P. 6,183.16	15,434.47	9,251.31
February	14,358.2	4,861.1	19,219.3	81,388.35	19,662.59	1,160.76	102,211.70	94,613.62	P. 7,598.08	14,414.48	6,816.40
March	16,154.3	6,076.15	22,230.45	91,239.72	24,369.27	648.33	116,257.32	105,820.05	P. 10,437.27	16,672.84	6,235.57
April	15,131.95	5,434.8	20,566.75	80,333.42	21,554.91	799.35	102,687.68	99,852.40	P. 2,835.28	15,425.06	12,589.78
May	16,006.2	5,828.15	21,834.35	84,813.90	23,045.78	517.69	108,377.37	102,790.60	P. 5,586.77	16,375.76	10,788.99
June	15,704.25	5,731.5	21,435.75	83,016.74	22,265.24	3,054.20	108,336.18	104,673.75	P. 3,662.43	16,076.81	12,414.38
July	14,734.6	5,802.55	20,537.15	78,065.02	22,587.11	1,875.57	102,527.70	100,967.43	P. 1,560.27	15,402.86	13,842.59
August	15,369.5	5,384.25	20,753.75	81,683.67	21,594.80	1,292.60	104,571.07	108,395.28	L. 3,824.21	15,565.31	19,389.52
September	13,980.25	5,321.4	19,301.65	78,392.30	20,633.29	1,040.73	100,066.32	101,523.66	L. 1,457.34	14,476.24	15,933.58
October	4,572.8	953.5	5,526.3	25,685.54	3,418.48	374.41	29,478.43	56,777.54	L. 27,299.11	4,144.73	31,443.84
November	11,626.05	2,266.85	13,892.9	77,351.40	8,485.63	1,036.43	86,873.46	101,022.20	L. 14,148.74	10,419.68	24,568.42
December	14,379.25	3,521.15	17,900.4	95,543.04	13,816.96	1,584.36	110,944.36	118,713.95	L. 7,769.59	13,425.30	21,194.89
1919.											
January	16,391.5	2,374.15	18,765.65	109,390.45	6,505.86	1,214.80	117,111.11	112,561.48	P. 4,549.63	14,074.24	9,524.61
Total	239,400.4	78,511.2	317,911.6	$1,354,665.24	$302,102.27	$20,693.67	$1,677,461.18	$1,678,289.43	L. $838.25	$238,433.71	$239,261.96

28. In the anthracite coal business the reasonable investment necessary to mine an annual ton of coal is not less than $5.00; that is to say that to produce 300,000 tons annually requires an investment in coal and equipment of at least $1,500,000. The fair value of the property and equipment of this Claimant used in mining the coal the subject matter of the present claim was, during the period from September 1, 1917, to January 31, 1919, not less than $1,500,000. During the said period the said plant was economically and efficiently operated and the said coal produced at a reasonably low cost in comparison with other anthracite collieries. The Claimant avers that a just and reasonable profit on said coal would have been 75 cents per ton, which profit could have been obtained on the said coal so sold, had it not been for the said Government price restrictions.

29. The said Act of August 10th, 1917 (40 Statutes at Large 276), under which the said prices were fixed by the President and by the United States Fuel Administrator, in section 25 thereof, after authorizing the President to fix the prices of coal or to requisition the mines, provides, *inter alia*, as follows:—

> "That if the prices so fixed, or if, in the case of the taking over or requisitioning of the mines or business of any such producer or dealer the compensation therefor as determined by the provisions of this Act be not satisfactory to the person or persons entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined, and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation in the manner provided by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code."

The said section 25 further provides:—

> "In fixing maximum prices for producers the commission shall allow the cost of production, including the

expense of operation, maintenance, depreciation, and depletion, and shall add thereto a just and reasonable profit."

30. This Claimant is advised and believes that under the said Act of Congress, and the said orders of the President and the United States Fuel Administrator, a contract was created between the Claimant and the United States, and that by this contract the United States is obligated to pay to the Claimant a sum of money which, added to the amount received by it from sales of coal at the prices fixed by the Government from September 1, 1917, to January 31, 1919, will be just compensation for the coal sold at the prices so fixed. The Claimant avers that this sum is $239,261.96.

31. No action has been taken by the Congress of the United States or by either House thereof or in any court or by any of the departments on the claim here presented; this Claimant is the sole owner thereof and the only person interested therein, and no assignment or transfer of the said claim or any part thereof or any interest therein has been made; this Claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets; and this claimant has at all times borne true allegiance to the Government of the United States, and has not in any way aided or abetted or given encouragement to rebellion against the said Government.

32. Wherefore the Claimant prays judgment against the United States for the sum of $239,261.96.

PINE HILL COAL COMPANY, INC.
By
CLARENCE B. STURGES,
President.

HENRY S. DRINKER, JR.,
Attorney of Record.
750 Bullitt Building, Philadelphia, Pa.

PERCY C. MADEIRA, JR.,
DOUGLAS M. MOFFAT,
WILLIAM A. GLASGOW, JR.,
Of Counsel.

STATE OF NEW YORK
COUNTY OF NEW YORK.

CLARENCE B. STURGES, being duly sworn according to law, deposes and says that he is President of Pine Hill Coal Company, Inc., the petitioner and claimant herein, that he is duly authorized to verify this petition on behalf of the said claimant, and that he believes the facts as stated in the said petition to be true.

Sworn and subscribed to before me this 19th day of Sept. 1919.

[Notarial Seal]

(Sgd) ROBERT J. SIMPSON,
Notary Public.

My commission expires March 30th 1920.
Notary public, Kings County No. 13
Certificate filed in New York County No. 103
New York Co. Register No. 10125.

EXHIBIT A.

(Fuel Administration Publication No. 3.)

The following regulations shall apply to the intrastate, interstate, and foreign commerce of the United States, and the prices and margins referred to herein shall be in force pending further investigation or determination thereof by the President.

JOBBERS' MARGINS.

1. A coal jobber is defined as a person (or other agency) who purchases and resells coal to coal dealers or to consumers without physically handling it on, over, or through his own vehicle, dock, trestle, or yard.

2. For the buying and selling of bituminous coal a jobber shall not add to his purchase price a gross margin in excess of 15 cents per ton of 2,000 pounds, nor shall the combined gross margins of any number of jobbers who buy and sell a given shipment or shipments of bituminous coal exceed 15 cents per ton of 2,000 pounds.

3. For buying and selling anthracite coal a jobber shall not add to his purchase price a gross margin in excess of 20 cents per ton of 2,240 pounds when delivery of such coal is to be effected at or east of Buffalo. For buying and selling anthracite coal for delivery west of Buffalo a jobber shall not add to his purchase price a gross margin in excess of 30 cents per ton of 2,240 pounds. The combined gross margins of any number of jobbers who buy and sell a given shipment or shipments of anthracite coal for delivery at or east of Buffalo shall not exceed 20 cents per ton of 2,240 pounds, nor shall such combined margins exceed 30 cents per ton of 2,240 pounds for the delivery of anthracite coal west of Buffalo. Provided that jobber's gross margin realized on a

given shipment or shipments of anthracite coal may be increased by not more than 5 cents per ton of 2,240 pounds when the jobber incurs the expense of rescreening it at Atlantic or lake ports for trans-shipment by water.

4. Effective September 1, 1917, the maximum prices per ton of 2,240 pounds free on board cars at the mines for the grades and sizes of anthracite coal hereinafter specified shall not exceed the prices indicated in paragraph 5 when such coal is produced and sold by the Philadelphia & Reading Coal & Iron Co., Lehigh Coal & Navigation Co., Lehigh & Wilkes-Barre Coal Co., Hudson Coal Co., Delaware & Hudson Co., Scranton Coal Co., Lehigh Valley Coal Co., Coxe Bros. & Co., Pennsylvania Coal Co., Hillside Coal & Iron Co., Delaware, Lackawanna & Western Railroad Co., Delaware, Lackawanna & Western Coal Co., Susquehanna Coal Co., Susquehanna Collieries Co., Lytle Coal Co., or the M. A. Hanna Coal Co.

5. The grades and sizes for which the maximum prices are specified are as follows: White ash anthracite coal of the grade that between January 1, 1915, and January 1, 1917, was uniformly sold and recognized in the coal trade as coal of White ash grade; Red ash anthracite coal of the grade that between January 1, 1915, and January 1, 1917, was uniformly sold and recognized in the trade as coal of Red ash grade; and Lykens Valley anthracite coal that is mined exclusively from the Lykens Valley seams and of the grade that between January 1, 1915, and January 1, 1917, was uniformly sold and recognized in the coal trade as coal of Lykens Valley grade.

White-ash grade:

Broken	$4.55
Egg	4.45
Stove	4.70
Chestnut	4.80
Pea	4.00

Red-ash grade:

Broken	4.75
Egg	4.65
Stove	4.90
Chestnut	4.90
Pea	4.10

Lykens Valley grade:

Broken	5.00
Egg	4.90
Stove	5.30
Chestnut	5.30
Pea	4.35

6. Producers of anthracite coal who are not specified in paragraph 4 shall not sell the various grades and sizes of anthracite coal at prices that exceed by more than 75 cents per ton of 2,240 pounds free on board cars at the mines the prices enumerated in paragraph 5: *Provided*, That any producer of anthracite coal who incurs the expense of rescreening it at Atlantic or Lake ports for transshipment by water may increase the price thereof by not more than 5 cents per ton of 2,240 pounds.

7. Producers of anthracite coal specified in paragraph 4 of these regulations shall not sell anthracite coal to producers of anthracite coal not specified in paragraph 4.

8. Dealers and selling agents shall not sell coal produced by the producers included in paragraph 4 on the basis of the prices fixed at the mine for coal produced by producers not specified in said paragraph.

WOODROW WILSON.

The White House, August 23, 1917.

EXHIBIT B.

(Fuel Administration Publication No. 1.)

By virtue of the power conferred upon me under the act of Congress approved August 10, 1917, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," and particularly for the purpose of carrying into effect the provisions of said act relating to fuel, Harry A. Garfield is hereby designated and appointed United States Fuel Administrator to hold office during the pleasure of the President.

Said Fuel Administrator shall supervise, direct, and carry into effect the provisions of said act and the powers and authority therein given to the President so far as the same apply to fuel as set forth in said act, and to any and all practices, procedure, and regulations authorized under the provisions of said act applicable to fuel, including the issuance, regulation, and revocation under the name of said United States Fuel Administrator of licenses under said act. In this behalf he shall do and perform such acts and things as may be authorized and required of him from time to time by direction of the President and under such rules and regulations as may be prescribed.

Said Fuel Administrator shall also have the authority to employ such assistants and subordinates, including such counsel as may from time to time be deemed by him necessary, and to fix the compensation of such assistants, subordinates, and counsel.

All departments and established agencies of the Government are hereby directed to co-operate with the United States Fuel Administrator in the performance of his duties as hereinbefore set forth.

WOODROW WILSON.

The White House, 23 August, 1917.

EXHIBIT C.

(Fuel Administration Publication No. 4.)

To all persons, firms and corporations engaged in the mining and production of coal in the State of Pennsylvania:

The President of the United States having heretofore, on or about the 23d day of August, 1917, by virtue of the provisions of an Act of Congress approved August 10, 1917, entitled "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," ordered and directed that the maximum prices which should not be exceeded in the sale of Pennsylvania anthracite pea coal should be as follows, to wit: White ash pea coal, $4 per ton; red ash pea coal, $4.10 per ton; and Lykens Valley, $4.35 per ton, when sold by certain producers specified in paragraph 4 of the President's proclamation of August 23, 1917, and that when sold by any other producers the maximum price should not exceed by more than 75 cents the prices mentioned above:

Now, by direction of the President of the United States, the Fuel Administrator hereby orders and directs that, until further order in the premises, the above-mentioned maximum prices for Pennsylvania anthracite pea coal be, and the same hereby are, modified and reduced, pending further investigation, to the following maximum prices: White ash pea coal, $3.40 per ton; red ash pea coal, $3.50 per ton; and Lykens Valley, $3.75 per ton; which said prices are to be observed by the producers specified in paragraph 4 of the President's proclamation of August 23, 1917.

And it is further ordered that all other producers shall sell Pennsylvania anthracite pea coal at maximum prices not to exceed the above-mentioned maximum prices by more than 75 cents per ton of 2,240 pounds.

These prices shall become effective at 7 A.M., October 1, 1917.

H. A. GARFIELD,
Fuel Administrator.

WASHINGTON, D. C., 1 October, 1917.

EXHIBIT D.

THE WHITE HOUSE,
WASHINGTON, D. C., 28 November 1917.

The scale of prices prescribed August 23, 1917, by the President of the United States for anthracite coal at the mines, adjusted as to pea coal October 1, 1917, by order of the United States Fuel Administrator, is hereby amended by adding the sum of 35 cents to each of the prices so prescribed or adjusted; provided, however, that this increase in prices shall not apply to any coal sold at the mines under an existing contract containing a provision for an increase in the price of coal thereunder, in case of an increase of wages paid to miners.

This order shall become effective at 7 A. M., on December 1, 1917.

WOODROW WILSON.

EXHIBIT E.

(Fuel Administration Circular No. 3505.)

UNITED STATES FUEL ADMINISTRATION,
WASHINGTON, D. C., November 7, 1918.

The President of the United States having heretofore by Executive Order dated 23 August, 1917, under authority of an Act of Congress known as the "Food and Fuel Control Act" approved August 10, 1917, fixed the maximum prices per ton of 2,240 pounds f. o. b. cars at the mines for the various grades and sizes of anthracite coal mined and produced in the anthracite coal-producing districts in the State of Pennsylvania, as set forth in said Executive Order, and

The United States Fuel Administrator, acting under authority of an Executive Order of the President of the United States, dated 23 August, 1917, appointing said Administrator, and of subsequent Executive Orders, and in furtherance of the purpose of said orders and of said Act of Congress approved August 10, 1917, having after due consideration by an order effective October 1, 1917, at 7 A. M., modified and reduced the maximum prices for that size and grade of anthracite coal known as anthracite "pea" coal as fixed by said Executive Order of the President dated 23 August, 1917, and

It appearing to the United States Fuel Administrator that the scale of wages paid to the miners by the producers in the anthracite coal-producing districts in the State of Pennsylvania was on November 1, 1918, increased, and thereby the cost of mining and producing such anthracite coal was increased,

The United States Fuel Administrator hereby orders and directs that all prices for the different sizes and grades of anthracite coal f. o. b. mines in the anthracite coal-producing districts in the State of Pennsylvania as specified and fixed by the said Executive Order of the President dated 23 August, 1917, and the order of the United States Fuel

Administrator effective October 1, 1917, at 7 A. M., and the order of the United States Fuel Administrator effective December 1, 1917, adding the sum of Thirty-five Cents (.35) per gross ton of 2,240 pounds to such prices shall be and the same hereby are increased by the sum of One Dollar and Five Cents ($1.05) for each gross ton of 2,240 pounds as to all such anthracite coal mined and produced on and after November 1, 1918.

No producer, distributor, or retail dealer shall include in or add to the prices asked, demanded, or received for any of the sizes and grades of anthracite coal hereinabove specified shipped and delivered after November 1, 1918, said additional sum of One Dollar and Five Cents ($1.05) per each gross ton of 2,240 pounds of such anthracite coal, unless the producer of such anthracite coal actually paid the said increased scale of wages to the miners of such coal effective on and after November 1, 1918.

(Signed) H. A. GARFIELD,
United States Fuel Administrator.

EXHIBIT F.

(FUEL ADMINISTRATION CIRCULAR No. 3886.)

United States Fuel Administration,

WASHINGTON, D. C., January 31, 1919.

The United States Fuel Administrator, acting under authority of an Executive Order of the President of the United States, dated 23 August, 1917, appointing said Administrator, and of subsequent Executive Orders, and in furtherance of the purpose of said orders and of the Act of Congress therein referred to and approved August 10, 1917.

Hereby orders and directs:

SECTION 1. That all rules, regulations, orders, or proclamations, except those enumerated in Section II of this order, heretofore issued or promulgated by, or under authority of the President of the United States or by or under authority of, said United States Fuel Administrator, fixing the prices of coal, coke, charcoal, or wood, or regulating the production, sale, shipment, distribution, apportionment, storage, or use thereof, or requiring the obtaining of licenses to engage in or carry on the business of distributing coal or coke, or establishing rules and regulations in respect to the holders of such licenses or otherwise carrying out the purpose or provisions of the Act of Congress hereinabove referred to, and the operation and effect of such rules, regulations, orders, or proclamations, be, and the same hereby are, suspended, until further or other order or orders in the premises by the President of the United States, said United States Fuel Administrator, or other agency created by the President under said Act, in respect to all coal, coke, charcoal, or wood produced, sold, shipped, distributed, apportioned, stored, or used after January 31, 1919.

SECTION II. That the following rules, regulations, orders and proclamations shall continue in full force and effect until further order or orders in the premises:

(1) Order of said United States Fuel Administrator, dated January 17, 1919, establishing a regulation entitled "Regulation relative to the making of contracts for the sale of coal or coke by operators, producers, jobbers, sales agents, or purchasing agents of coal or coke."

(2) Order of said United States Fuel Administrator, dated November 6, 1917, entitled "Order relative to Tidewater Transshipment of coal at Hampton Roads, Baltimore, Philadelphia, and New York, and for the employment and cooperation with the Tidewater Coal Exchange so called as a common agency to facilitate transshipment and to reduce delays in the use of coal-cars and coal carrying vessels."

(3) All rules, regulations, orders, or proclamations, in so far as such rules, regulations, orders, or proclamations confer upon or delegate to said United States Fuel Administrator, either individually or acting through that governmental organization called the United States Fuel Administration, any powers or authority for the carrying out of the purposes of the Act of Congress hereinabove referred to.

(4) Order of said United States Fuel Administrator, dated January 31, 1919, prohibiting the shipment of coal for reconsignment.

SECTION III. That no order or regulations relative to the prices of coal, coke, charcoal, or wood, or relative to the profits, margins, or commissions on sales thereof, or relative to the production, sale, shipment, distribution, apportionment, storage, or use thereof, shall be made after the date of this order by the Federal Fuel Administrator for any state, or by any local Fuel Administrator or Committee, pursuant to authority heretofore delegated or conferred, unless and until such proposed order or regulation shall have first been submitted to and approved by said United States Fuel Administrator.

SECTION IV. That nothing in this order contained shall be construed to cancel or revoke the designation or appoint-

ment of any person as an officer, agent, representative, counsel, assistant or subordinate of said United States Fuel Administrator or of the United States Fuel Administration.

(Signed) H. A. GARFIELD,
United States Fuel Administrator.

Approved:
WOODROW WILSON.

II. *History of Proceedings.*

On December 8, 1919, the defendants filed a motion for leave to withdraw general traverse and to file a demurrer. This motion was allowed December 12, 1919, and said demurrer was filed April 8, 1920.

III. *Demurrer.*

Filed April 8, 1920.

Demurrer.

Now comes the United States by the Attorney General and demurring to the petition filed herein state as grounds thereof—

I. That the facts alleged in the petition do not constitute a cause of action.

II. That the facts alleged in the petition do not constitute a cause of action within the jurisdiction of this Court.

FRANK DAVIS, JR.,
Assistant Attorney General.
HOWARD W. AMELI,
Special Assistant to the Attorney General.

IV. *Argument and Submission of Demurrer.*

On April 21, 1920, the demurrer in this case was argued and submitted by Mr. H. W. Ameli, for the demurrer, and by Messrs. Henry S. Drinker, Jr., and William A. Glasgow in opposition thereto.

V. *Opinion of the Court on Demurrer by Campbell, Ch. J., Concurred in by Judges Graham, Hay, Downey, and Booth.*

Filed June 14, 1920.

Opinion.

CAMPBELL, *Chief Justice,* delivered the opinion of the court:

The plaintiff's petition is demurred to, and the questions thus presented involve some features, particularly section 25, of the Lever Act, approved August 10, 1917 (40 Stat., 275). The claim is that under the Lever Act and the orders of the President and the Fuel Administrator fixing the prices of coal "a contract was created between the claimant and the United States" by which the latter became obligated to pay "a sum of money which added to the amount received by the plaintiff from sales of coal at the prices fixed by the Government" during the period mentioned "will be just compensation for the coal sold at the prices so fixed."

The plaintiff had been engaged for many years in the business of mining, producing and selling anthracite coal in the State of Penn-

sylvania. It was operating mines and collieries in Schuylkill County when the Lever Act was passed. The coal mined by it was of the white-ash grade, and its principal business consisted of the mining and handling the larger sizes of coal, designated as egg, stove, chestnut, and pea, which are commonly called "domestic sizes." As an incident to mining and producing domestic sizes, there is necessarily produced some smaller sizes of coal, designated as buckwheat, rice, barley, and culm, which are commonly called "steam sizes." These are "sold and used for manufacturing purposes in competition with bituminous coal." The averments of the petition are substantially as follows: That the President, "under and by virtue of the powers granted to him by" the Lever Act, by Executive order, on August 23, 1917, fixing the maximum price at which the domestic sizes of anthracite coal could be sold f. o. b. mines after September 1, 1917; that on the 23d day of August, 1917, the President appointed Mr. Garfield the United States Fuel Administrator, to whom was delegated, by the President, the powers and authority given to the latter in the Lever Act, so far as it applied to fuel; that the maximum price fixed by the President in August for anthracite pea coal was reduced by the Fuel Administrator on October 1 by 60 cents per ton; that the prices on domestic sizes as originally fixed, and as amended in October, were afterwards increased by adding 35 cents per ton thereto; that these latter prices were again reduced by 30 cents per ton on all coal sold during the months of April, May, June, July, and August, 1918; that a further revision was made in November, 1918, by increasing the prices on domestic sizes by $1.05 per ton on coal mined and produced after November, 1918; that the maximum prices were fixed, as above stated, when the coal was mined or produced by certain designated persons or collieries, and that other producers could charge 75 cents per ton more than those named. The plaintiff was not one of those specially named, but came within the latter class.

It is averred that the maximum prices, as originally fixed, or as amended or revised, and as applied to coal mined and produced by plaintiff, "were unjust, unreasonable, and did not afford just compensation therefor"; that these prices were unsatisfactory to plaintiff and were protested against by it from time to time to the Fuel Administrator.

A statement for each month, beginning September, 1917, and extending to, and including, January, 1919, is made, purporting to show the total number of tons of the different sizes of coal produced by plaintiff, the quantities sold at the maximum fixed prices, and the quantities of steam sizes sold at other than the prices fixed for domestic sizes. Taking one of these monthly statements as typical of all it appears that the plaintiff produced and sold in January, 1918, approximately 20,580 tons of coal of domestic and steam sizes, of which there were of the four domestic sizes 15,515 tons, and of the steam sizes 5,065 tons. The amount realized from domestic sizes is stated, and the amount realized from other sizes is also stated. It is then averred that these domestic sizes were all sold "either at the maximum prices" fixed, and applicable to plaintiff's product during the month, "or under contracts approved by the Fuel Admini-

trator at prices higher than those so fixed," while the steam sizes were sold at prevailing market prices, and that plaintiff's total receipts from its mining operations during the month of January were $110,982.99.

It is alleged that "the cost of production of the said coal, during the said month, including the expenses of operation, maintenance, depreciation, and depletion, was $104,799.83." A similar averment is made as to the cost of production in each of the months mentioned, the amounts alone varying. There is an averment that a reasonable price for the 15,515 tons of coal of domestic sizes mined and sold at Government prices during January "and the minimum price which this claimant could have obtained for the same if the prices had not been fixed" would have been at least $9,250 in excess of receipts for coal sold at the fixed prices.

Recapitulating the statements for the several months, it is claimed (1) that plaintiff's total receipts from all mining operations were, in round figures, $1,677,000, and its "cost of production" $1,678,000, or an actual loss, stated to be $838.25; (2) that if "fair prices" had been fixed, its minimum profits would have been $238,433.71, and (3) that its loss, on account of price fixing, was the sum of these items, or $239,261.96. It is averred that a reasonable profit would have been 75 cents per ton.

The plaintiff contends that it is entitled to reasonable compensation for the coal it sold at prices fixed by the Government; that, under the provisions of the Lever Act, it was the intention of Congress that the Government should respond for the difference between the amounts realized at the fixed prices and the amount (at least the minimum amount) plaintiff would have realized from sales if the prices for coal had not been fixed, and that unless this contention be upheld, there would be very grave doubt of the constitutionality of the act. Under the construction thus contended for, it is said in its brief, there can be no doubt as to the constitutionality of the price-fixing provision.

Manifestly, if the Lever Act, or the provisions thereof relating to the fixing of prices, be unconstitutional, the plaintiff can take nothing by its suit, and this is true whether the unconstitutionality rested upon a want of authority in Congress to enact the legislation in question or upon the plaintiff's contention that the severe penalties prescribed by the act amount to a prohibition against seeking judicial construction and therefore deny to plaintiff the equal protection of the law. Ex parte Young, 209 U. S. 123, 145.

1. Whether the act in its price-fixing provisions is constitutional or not depends on the power of Congress to enact it. Section 1 clearly shows the purposes of the statute and that it was a war measure. Not the least of the purposes mentioned was to establish and maintain government control of foods, feed, and fuel, and other things, called in the act "necessaries." It is declared that by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support of the Army and Navy, not alone to assure an adequate supply and equitable distribution of the "necessaries," but to pre-

vent scarcity, monopolization, manipulation, and private control, affecting the supply, distribution, and movement of the same.

Among the powers conferred on the Congress by the Constitution are these:

"To define and punish * * * offenses against the law of nations.

"To declare war * * * and make rules concerning captures on land and water.

"To raise and support armies * * *.

"To provide and maintain a Navy.

"To make rules for the government and regulation of the land and naval forces.

"To provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasions.

"To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress * * *.

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

These powers are granted by Article I, section 8.

In connection with thes powers, expressly granted, there should be considered the provisions which prohibit the several States, without the consent of Congress, from keeping troops or ships of war in time of peace, from entering into any agreement or compact with another State or with a foreign power, or from engaging in war, unless actually invaded, or in such imminent danger as will not admit of delay (Art. I, sec. 10), and the further provision obligating the United States to protect each of the States against invasion (Art. IV, sec. 4).

The prohibition against the exercise of war powers by the States, except with the consent of Congress, may have an important bearing on the reservation to the States, respectively, or to the people, made in the tenth amendment. The powers that are reserved are those not delegated to the United States by the Constitution "nor prohibited by it to the States." Under these grants and guaranties of the Constitution, and its prohibitions against State action, were the powers that inhered in the State as an independent sovereignty, by which its defense and protection could be asserted, entirely lost, or were they carried by implication into the agency, created by the Constitution, charged with the duty of defense and protection, namely the United States? As early as the year 1801 it was declared by Chief Justice Marshall that "the whole powers of war" were vested by the Constitution in Congress. (The Amelia, 1 Cranch, 1, 28.)

The Nation was at war, and because of that fact Congress determined, among other things, that the prices at which producers and dealers could sell coal should be fixed and controlled by governmental agencies. It requires no argument to show that coal was a

"necessary." Whether it was or not, or what we may think of the necessity for the legislation in question, is immaterial, however, because "Congress is authorized to make all laws necessary and proper to carry into effect the granted powers. The measures to be taken in carrying on war and to suppress insurrection are not defined The decision of all such questions rests wholly in the discretion of those to whom the substantial powers involved are confined by the Constitution." (Stewart v. Kahn, 11 Wall., 493, 506.) The courts may not inquire into the motives of Congress, nor the wisdom of the legislation, nor may they pass upon the necessity of a power possessed. (Hamilton v. Kentucky Distilleries Co., 251 U. S., 146.) The war power of the United States, like its other powers, is subject to applicable constitutional limitations. (Hamilton v. Kentucky Distilleries Co., supra.) This is equivalent to saying that the Constitution is to be construed by all of its parts. But the general principle, stated in McCulloch v. Maryland (4 Wheat., 316, 421), has been uniformly conceded to be the true one in determining the validity of an enactment. The Chief Justice there stated:

"We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

The legislation is not to be measured by the grant of some special power, but by "the scope of the Constitution" itself, because Congress can make laws necessary and proper for carrying into execution the enumerated powers and "all other powers vested by this Constitution in the Government of the United States." Relative to this latter provision, it was said, in United States v. Fisher (2 Cranch, 358, 395)—

"In construing this clause, it would be incorrect and would produce endless difficulties if the opinion should be maintained that no law was authorized which was not indispensably necessery to give effect to a specified power."

As already suggested, there is prohibited to the States, severally, a very important attribute of sovereignty—the right to wage war—and the United States undertakes to defend and protect the State against invasion. And one of the principal purposes of the Constitution is declared, in its preamble, to be to provide for the common defense.

The power to effectuate these objects and guaranties is within the scope of the Constitution and resides, primarily, in the legislative department of the Government. Whatever is necessary to their accomplishment may be done by the Government, because it is not

conceivable that the Constitution fails at the moment of extreme te of the Nation and people it was established to serve.

"Congress has power to declare war and to create and equip armie and navies * * *. Having such powers, it has such other an implied ones as are necessary and appropriate for the purpose carrying the powers expressly given into effect." (United States Gettysburg Ry., 160 U. S., 668, 681.)

The extent of the war power may not be accurately defined. would be unwise to attempt to say in advance what it may b because, as has been said, "war creates its own necessities," and the must be met as they arise. It can, however, be confidently asserte within the scope of the Constitution, that the war power of t United States is at least coextensive with the Nation's right of sel preservation. In view of these powers and the declared purposes the legislation, we can not doubt the existence of the right to fix t prices of coal, as was authorized by the Lever Act or the propriet of its exercise. This price-fixing feature was not a taking of propert within the meaning of the fifth amendment. It in effect declare that certain products had become clothed by the necessity of war an the exigencies of the situation with a public interest. Provision made for requisitioning the plant or business, as well as for purcha ing the entire output. So long as the owner continued to operate, came within the terms of the law, but as was said in Munn v. Illino (94 U. S., 113, 126), "He may withdraw his grant by discontinuin the use, but so long as he maintains the use, he must submit to t control."

The plaintiff insists, however, that the act itself creates a liabili against the United States to pay the difference between the amou realized from sales of its coal at the prices fixed and the amounts would have realized at proper market prices. This liability, it argued, is found in the terms of the act, or, at least, in the intenti of Congress in enacting section 25 of the Lever Act.

The fourth paragraph of section 25 reads:

"That if the prices so fixed, or if in the case of the taking over requisitioning of the mines or business of any such producer or dea the compensation therefor as determined by the provisions of t act, be not satisfactory to the person or persons entitled to rece the same, such person shall be paid seventy-five per centum of t amount so determined, and shall be entitled to sue the United Sta to recover such further sum as, added to said seventy-five per centu will make up such amount as will be just compensation in the ma ner provided by section twenty-four, paragraph twenty, and secti one hundred and forty-five of the Judicial Code."

Plainly this language is not sufficient (except by interpolating phrase not to be found in the act) to create such a liability, as assessed. The plaintiff would have us interpolate certain words to interpret the paragraph as though it read "that if the prices fixed * * * be not satisfactory to the person or persons entit to receive the same, such persons * * * shall be entitled to the United States to recover such further sum as * * * make up such amount as will be just compensation, etc."

It is of prime importance to ascertain and give effect to the legislative intention, but that intention is to be sought primarily in the language of the enactment. The interpretation which plaintiff insists upon imposes a liability on the Government for the difference between the amount realized by producers of coal and coke for their products, when disposed of at Government prices, and the amounts that would have been received from sales at prices determined by the producers, or market conditions. In other words, that Congress intended that the President could fix the maximum prices to be charged by producers of coal and coke when selling it to dealers or consumers, and that such producers could receive the purchase price from these, and then recover from the United States the amounts, including a fair and just profit, which they would have received from dealers and consumers if permitted to dispose of their products in their own way. They would credit, however, the amount received from, or chargeable to, such dealers or consumers.

The act deals with a number of articles which are termed "necessaries." Why it would give a status to coal and coke so different from that given to other necessaries is not made clear by any consideration adduced in argument. The minimum price for wheat was fixed to stimulate production. If the only purpose, as to coal, was to stimulate its production, why was the maximum price, instead of the minimum, prescribed as to that one of the necessaries? The applicable purpose declared in the act was to "establish and maintain Government control of such necessaries during the war," as well as to prevent, locally or generally, scarcity, monopolization, hoarding, and injurious speculation.

Accordingly, section 25 as finally framed makes provision for several contingencies affecting the coal and coke supply.

1. It authorizes the fixing of maximum prices at which these products could be sold.

2. It authorizes the requisitioning and taking over of the plant, business, and all appurtenances thereof, belonging to the producer or dealer, and the operation thereof through governmental agency.

3. It authorizes the President to require any and all producers of coal and coke to sell their entire products only to the United States.

There is an express provision for just compensation to producer or dealer, for the use of the plant, business, etc., that may be taken over, and there are provisions relating to the prices to be paid for the products when required to be sold to the United States alone, and then follows a provision that if the prices so fixed by the "Federal Trade Commission" be unsatisfactory to the producer, he could accept 75 per cent of the amount so determined and recover from the United States such further sum as, added to the 75 per cent, will make such amount as will be "just compensation." The "prices" here referred to, it will be observed, are those to be fixed by the Federal Trade Commission. The fact, however, is that the President did not adopt the Federal Trade Commission as the agency for fixing the price, nor was he required by the act to do so. He proceeded under other provisions of the act. And while there is provi-

sion as to the prices, fixed by the Federal Trade Commission, in the case of taking the entire product by the United States, where can be found any provision relating to the prices to be paid for the entire output, in the event the agency adopted be not the Federal Trade Commission, but, as was the fact, the Fuel Administration? It will be found in the fourth paragraph, above quoted, of the section, if that paragraph be transposed, so as to follow the paragraph authorizing the President to require the sale of the entire products, in designated areas, to the United States. If what is now paragraph 4 be transposed to follow what is now paragraph 6, it will be seen that full operation can be given to the words "that if the prices so fixed," appearing in paragraph 4, which plaintiff insists are meaningless, as they now stand, unless its views be adopted. As has been said the act authorizes the requisitioning of the plant, and also it authorizes the purchasing of the output. In either event, there is an appropriation by the Government; and just compensation is contemplated. There is, accordingly, provision for paying 75 per cent of the amount ascertained if the output is purchased, or 75 per cent of the amount determined for the use of the plant if it be requisitioned, and suit for such additional amount as will, in either case, make "just compensation."

The contention of plaintiff requires an interpolation that a body without legislative powers is not authorized to make. That the transposition of paragraph 4 may be made, in order to effectuate the legislative intention, is clear. Suth. Stat. Const., sec. 260; State v. Turnpike Co., 16 Ohio St., 308, 320; Postmaster General v. Early, 12 Wheat., 136, 152; Church of the Holy Trinity v. United States, 143 U. S., 457.

The construction we adopt accords with the history of the enactment in its course through the two Houses of Congress.

After its passage by the House, and while the bill was under consideration in the Senate, an amendment was offered which furnished a large part of section 25 as finally adopted. This amendment, as originally introduced, was not drawn by its proponent. (Cong. Record, vol. 55, p. 5313.) As first presented on July 12, 1917, it referred to "coal, coke, petroleum, or any of their products," but it was amended so as to omit the products other than coal and coke. (Cong. Record, vol. 55, p. 5311.) In its amended form it provided, in one section, for the fixing of the price of these products whenever sold by producer or dealer, and in another for the requisitioning of the plant or business and the operation of the same by the Government, and, following these, was a third section, which provided for suit against the Government in case the prices fixed or the compensation prescribed for the plant or business were not satisfactory to the person entitled to the same. This proposed amendment is set forth at length in the Record, page 5310. It is noticeable that its third section would logically have followed the fourth section. It is difficult to find, in the debates on the amendment, an indication of a purpose to create a liability on the Government such as is urged in the present case. The proponent of the amendment declared it to be his belief that the operators would be glad to comply with the prices that would be fixed and that he had shown in a former speech

the excessiveness of prices that had been charged for coal and coke. (Cong. Record, p. 5311.) Another Senator who had participated in framing the modified amendment (Cong. Record, p. 5313), addressing himself to the subject of it, said it contemplated that the United States "shall become the owner of all the coal mined and that it shall pay to the coal operators a fair and reasonable price for it, including the cost of production, maintenance, operation, depletion, and depreciation," and then resell the coal. This evidently refers to the feature of the amendment providing for the purchase of the entire output by the Government (sec. 5 of the amendment). Another Senator expressed tersely the view that apparently prevailed when he said: "The Government must either control the prices or purchase the coal and then set it moving. * * * This bill provides in the alternative for both of these plans." (Cong. Record, p. 5320.) The amendment was adopted and became substantially section 22 of the bill as passed by the Senate and as it went to conference.

Many changes had been made in the bill, and the committee of conference dealt with these, among them No. 69, being the section added by the Senate as section 22. The conference report (Cong. Record, p. 5733) shows that in lieu of the Senate amendment there was inserted section 25 as it now appears in the act. The statement of the managers on the part of the House, which was made in accordance with the House rule, providing for a statement to accompany a conference report, and intended to acquaint the Members with the effect of the report, states (Cong. Record, p. 5738) that the Senate amendment inserted a new section "providing for comprehensive governmental control of the coal and coke business, including the fixing and regulating of prices, the requisitioning and operating of plants and business, the governmental purchase and sale of coal and coke, and a detailed investigation of the coal and coke business," and added:

"The House recedes and agrees with an amendment changing the section number to 25; limiting the operation of the section to the period of the war; extending the power of regulation by the President to include the method of production in addition to the sale, shipment, distribution, apportionment or storage of coal and coke; eliminating recourse to the Board of Mediation and Conciliation by any person dissatisfied with wages fixed by the President; reducing the amount to be paid to any person dissatisfied with the compensation fixed in the exercise of the requisitioning or purchasing power to 75 per cent instead of the entire amount, with the right to sue the United States to recover such further sum as added to said 75 per cent will constitute just compensation; eliminating the provision that there shall be but one dealer between the producer and consumer in fixing maximum prices for dealers; and making other changes of a minor or incidental nature."

The history of the act and the statement to the House clearly show that the part of the amendment as originally introduced in the Senate, which refers to suits against the United States for compensation additional to that resulting from fixed prices, was dealt with by an elimination of that feature, and there was provided a right to

accept 75 per cent of the compensation "fixed in the exercise of the requisitioning or purchasing power," and to sue for such additional sum as would give just compensation. The section, as rewritten, omits the statement originally therein of the reason for its enactment and leaves the general and more comprehensive purpose as stated in the first section of the act to apply. But the section as rewritten also deals, as has been mentioned, with two classes of taking and price fixing—the one referring to the requisitioning of the plant or business, and the other to the purchasing of the entire output of the producer. The statement of the managers on the part of the House acquaints the Members with this condition, but makes no mention of any provision or purpose, in the act, to subject the Government to liability on account of the fixing of prices between producer or dealer and consumer.

The court is not warranted in importing phrases into the act that will make it mean something different from what it says and different from what the House Members were told it meant; nor can the court say that, because the act contains words that appeared in the amendment as it passed the Senate, the related words that were therein should be considered as still a part of the section, when, as a matter of fact, the amendment was dealt with, changed in conference, and the entire scope of the related words was materially altered.

It is our conclusion that the Lever Act does not create a liability on the United States to producers of coal who sold their product at prices fixed by the Government, and it follows that the demurrer should be sustained. And it is so ordered.

Graham, *Judge;* Hay, *Judge;* Downey, *Judge;* and Booth, *Judge,* concur.

VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Fourteenth day of June, A. D. 1920, judgment was ordered to be entered as follows:

This case was submitted upon the defendants' demurrer to the claimant's petition, on consideration whereof the court is of the opinion that the demurrer is well taken.

It is therefore ordered, adjudged and decreed that the defendants' demurrer to the plaintiff's petition be sustained, and that the petition be and the same is hereby dismissed.

BY THE COURT.

VII. *Claimant's Application for and Allowance of an Appeal.*

Pine Hill Coal Company, Inc., the above named Claimant by its attorney, Henry S. Drinker, Jr., Esq., gives notice and makes application to the Court for an allowance of an appeal in the above-entitled case to the Supreme Court of the United States from the judgment of this Court sustaining the demurrer and dismissing

Claimant's petition, and shows that the amount involved in the said case is in excess of $3,000.00.

HENRY S. DRINKER, JR.,
Attorney for Claimant.

Filed June 30, 1920.

Allowed.

EDWARD K. CAMPBELL,
Chief Justice.

June 30/20.

Court of Claims.

No. 34202.

PINE HILL COAL COMPANY, INC.,

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case on demurrer; of the opinion of the court by Campbell, Ch., J.; of the judgment of the court; of the application of the claimant for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this First day of July, A. D. 1920.

[Seal Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 27,798. Court of Claims. Term No. 441. Pine Hill Coal Company, Inc., appellant, vs. The United States. Filed July 10th, 1920. File No. 27,798.